

Employment Discrimination is Against the Law



Montana Department of Labor & Industry

State of Montana Human Rights Bureau

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The Department of Labor & Industry is committed to making its services available to people with disabilities. Persons with disabilities requiring accommodation to take advantage of the department's services should contact the Human Rights Bureau.



DISCRIMINATION IN EMPLOYMENT IS PROHIBITED IF BASED ON THESE PROTECTED CLASSES

Age (all ages)

Religion, Creed

Physical or Mental Disability

Marital Status

Race, Color, National Origin

Sex (includes maternity, pregnancy, and sexual harassment)

Political Belief (state and local government employment or service)

WHAT IS ILLEGAL DISCRIMINATION?

The following practices (if based on one or more of the above classes) are illegal:

- To discharge, to refuse to hire, or to discriminate against a person with respect to compensation or privileges of employment
- To deny a reasonable maternity leave or refuse to reinstate an employee following the leave
- For labor unions to deny membership or otherwise discriminate against a person or member
- For employment agencies to fail or refuse to refer for employment
- To retaliate against a person who filed a complaint, participated in the investigation, or opposed discriminatory practices

EMPLOYER ALERT!

- Anyone who hires one or more persons is subject to the Montana Human Rights Act
- Questions on applications should be related to skills, experience, and education important to performing the job
- Avoid questions about an applicant's race, age, religion, medical condition, marital status, or family responsibilities
- To avoid claims of discrimination, apply standards equally to all employees

The Human Rights Bureau strongly encourages all Montana employers to develop effective discrimination policies and grievance procedures. Effective policies and procedures will protect your employees from discrimination and may prevent liability for violations of state and federal anti-discrimination laws. For more information, visit our website at www.montanadiscrimination.com



RETALIATION!

It is unlawful for an employer to retaliate against any employee, past employee, or applicant because he or she has complained about discrimination, is associated with a person who has complained about discrimination, or has exercised his or her rights under discrimination laws.

PROTECTED CLASSES



HUMAN RIGHTS BUREAU PROCESS

The Montana Department of Labor and Industry is the state agency which enforces Montana's discrimination laws.

- The Human Rights Bureau informally investigates complaints of illegal discrimination as a neutral party. The Human Rights Bureau also offers voluntary mediation in complaints of illegal discrimination, and is committed to providing education to both employers and employees alike
- The Hearings Bureau of the Department of Labor and Industry conducts formal public hearings of discrimination cases
- The Montana Human Rights Commission is a five member panel of private citizens appointed by the Governor. The Commission hears appeals of decisions by the Hearings examiner and the Human Rights Bureau

The Human Rights Bureau investigates complaints of discrimination on behalf of the federal Equal Employment Opportunity Commission, when federal discrimination laws apply. In many cases, complaints are investigated as possible violations of both state and federal statutes.

THE PROCESS

Intake- A person who believes he or she is a victim of illegal discrimination should contact the Montana Human Rights Bureau. An investigator will take the information by telephone and draft a complaint, if the facts indicate that illegal discrimination may have occurred. A formal complaint must be filed within 180 days of the alleged discriminatory action. The time limit for filing may be extended up to 300 days if a formal grievance procedure is invoked

Mediation- Once the case has been filed, the parties have the option of working with a mediator to try to resolve the dispute. Mediation is voluntary, non-binding, and must be agreed to by both parties

Investigation- If the case is not resolved through mediation, an informal investigation will be conducted to determine if illegal discrimination occurred. The investigation must be completed within 180 days after the case is filed. If "no cause" is found to believe illegal discrimination occurred, the person who filed the case is given the right to sue and may file in district court or appeal the decision to the Human Rights Commission

Conciliation- If "reasonable cause" is found to believe illegal discrimination occurred, a conciliator with the Human Rights Bureau is available to work with the parties to reach a resolution, prior to a public hearing

Public Hearing- If conciliation is not possible, a Hearings examiner with the Department of Labor and Industry's Hearings Bureau, conducts a formal hearing similar to a non-jury trial. The Hearing examiner will issue a decision of whether discrimination occurred and, if appropriate, award damages. The decision can be appealed to the Montana Human Rights Commission

Remedies For Discrimination If the Department finds that unlawful discrimination has occurred it is empowered to order the respondent to:

1. Cease the discriminatory conduct
2. Rectify any harm through the payment of back pay or other actual damages
3. Participate in Affirmative Relief to eliminate future discriminatory practices

The Department of Labor and Industry may seek enforcement of an order in district court.



COMPLAINT PROCESS



EMPLOYEES HAVE THE RIGHT TO WORK IN AN ENVIRONMENT FREE OF ILLEGAL HARASSMENT

Sexual harassment includes unwelcome verbal or physical conduct of a sexual nature when:

- Submission to the conduct is explicitly or implicitly made a term or condition of employment
- Submission to, or rejection of, the conduct is used as the basis for an employment decision
- The conduct has the effect of unreasonably interfering with work performance, or creates an intimidating, hostile or offensive work environment
- Harassment directed toward a person because of gender
- A pattern of favoritism toward sexual partners

Sexual harassment is determined on a case-by-case basis. Acts which are offensive to one employee may not be offensive to another. Women are not the only victims of sexual harassment. Men may also be harassed.

Employees often do not report harassment because they are unaware of the law or fear retaliation.

Examples of Sexual Harassment:

Propositions or pressure to engage in sexual activity

Repeated body contact

Repeated sexual jokes, innuendoes or comments

Constant leering or staring

Inappropriate comments concerning appearance

Hiring or promoting a sex partner over more qualified persons

Harassment based upon gender in nontraditional employment

Impact of Sexual Harassment:

Emotional stress and related illnesses

Low self-esteem

Low morale

Absenteeism

Declining productivity

High turnover

Employer Liability: Employers may be liable for monetary compensation and other forms of relief to employees who are victims of sexual harassment by:

- The owner or manager
- Supervisors, whether or not the employer knew of the sexual harassment
- Co-workers and non-employees in the workplace, when the employer knew, or should have known of the sexual harassment and failed to take immediate corrective action

HARASSMENT



PREVENTING AND CORRECTING SEXUAL AND UNLAWFUL HARASSMENT

What Employers Should Do: The best tool for eliminating sexual harassment is *prevention*. The following steps may aid in preventing sexual harassment:

- Develop and post a written policy defining and prohibiting sexual harassment and providing an effective procedure for reporting sexual harassment and disciplining those who engage in it
- Provide training for all employees in sexual harassment prevention
- Express strong disapproval of any sexual conduct in the workplace, including jokes and comments which may be offensive
- Immediately investigate any report of sexual harassment
- Take immediate corrective action upon determining that sexual harassment occurred
- Inform employees of their right to report sexual harassment to the Montana Human Rights Bureau or the federal Equal Employment Opportunity Commission
- Once a complaint is resolved, follow up to ensure retaliation does not occur

What Employees Should Do: If you are offended by sexual jokes, comments, or other sexual or gender-based conduct in your workplace, immediately inform your supervisor. If your complaints are not resolved, or your supervisor is the alleged harasser, you should take the following steps:

- Report the sexual harassment to another supervisor or your employer
- Keep written records of the dates and facts of all sexual harassment and the names of witnesses
- Contact the Montana Human Rights Bureau



Harassment based on any protected class is unlawful discrimination!

Protected classes are: age, sex, color, race, physical and mental disability, national origin, religion, creed, marital status, (political belief in state and local government employment)

HARASSMENT IS UNLAWFUL



PREGNANT EMPLOYEES HAVE THESE RIGHTS:

- Nondiscrimination in hiring
- Reasonable maternity leave
- Use of accrued benefits and leave time
- Employer must provide reasonable accommodations as they would for any other employee with medical limitations
- Equal treatment in employee benefits and plans
- Continued employment during pregnancy
- No mandatory unreasonable leave
- Reinstatement after maternity leave



WHAT IS REASONABLE MATERNITY LEAVE?

- It is determined on a case-by-case basis. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be six to eight weeks after delivery
- Rely on the judgment of the employee's physician or other medical provider
- An employer is required to provide medically necessary maternity leave for the period of the employee's actual disability
- An employer may require the employee to provide medical verification

Reinstatement Following Maternity Leave: An employee who has signified her intent to return at the end of a reasonable leave of absence for maternity must be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits.

EMPLOYERS

- Know your company's disability benefit policies and policies regarding sick, vacation and annual leave
- Communicate with your pregnant employee about the anticipated need for maternity leave and put it in writing
- Be sure the employee understands her obligations to return to work on a specified date and provide medical verification if required. Make sure the employee knows how to request an extension of her leave should complications arise
- Replacement employees should understand his or her employment is temporary, unless the pregnant employee resigns or you make other arrangements for reinstatement to her same or equivalent job after the maternity leave
- If an employee plans to voluntarily resign because of her pregnancy, obtain the resignation in writing after making sure she is aware that you are prepared to grant a reasonable leave of absence as required by law

ADVISED ACCOMMODATION FOR BREASTFEEDING MOTHERS

In 2007, the Montana Legislature passed legislation requiring public employers (all state and county governments, municipalities, school districts, and the university system) to provide the following accommodations for breastfeeding mothers.

Although this legislation does not require private employers to provide these accommodations, it is advised.

- Provide a written policy that supports and encourages the practice of breastfeeding, and accommodates breastfeeding needs of employees
- Ensure that employees are provided with adequate facilities for breastfeeding or the expression of milk for their child
- Make reasonable efforts to provide a room or other location in close proximity to the work area, other than a toilet stall, where an employee can express breast milk
- Provide reasonable unpaid break time each day to an employee who needs to express breast milk; unless this would unduly disrupt the employer's operations

A pregnant employee may have additional protections under the federal Family Medical Leave Act. For Information regarding this law, see the U.S. Department of Labor website at www.dol.gov or call 1-866-487-9243

GOVERNMENT & BUSINESS



RIGHTS OF PERSONS WITH DISABILITIES IN EMPLOYMENT

The Montana Human Rights Act and Americans with Disabilities Act Amendments Act (ADAAA) prohibit discrimination in employment to an applicant or employee because of a physical or mental disability. An employer may have additional obligations under the federal Family Medical Leave Act. For information regarding this law, see the U.S. Department of Labor website at www.dol.gov or call 1-866-487-9243.

DISABILITY

Employment Rights

Qualified persons with physical and mental disabilities:

- May not be refused an application, interview or employment because of their disability
- May not be terminated or discharged because of their disability
- Have the right to a reasonable accommodation which would allow them to perform the essential functions of their position

Who is Covered?

To be protected under the Montana Human Rights Act and the ADAAA, an applicant or employee with a disability must:

- Have a physical or mental impairment that substantially limits one or more major life activities; or
- Have a record of such an impairment; or
- Be regarded or perceived as having such an impairment; and
- Be able to perform the essential functions of the position with or without a reasonable accommodation



REQUESTS FOR REASONABLE ACCOMMODATION

Employers

- If an employee should request a reasonable accommodation to perform the essential functions of their job, engage in a dialogue with the employee to determine the most appropriate accommodation
- Make a reasonable accommodation, required by a person with a disability, to perform the essential job functions

Employees should notify the employer if they need an accommodation and tell the employer what modifications are needed to perform the job



REASONABLE ACCOMMODATIONS

- Whether or not a suggested accommodation is “reasonable” will depend on factors such as cost, availability, necessity and whether a less expensive or more convenient accommodation is available
- The employer is not required to provide the accommodation suggested by the employee, if a different accommodation would allow the employee to perform the essential functions of the job
- An accommodation is not reasonable if it endangers any employee’s health or safety, a bona fide occupational exemption exists, or it creates an extraordinary financial hardship on the employer

Examples of Reasonable Accommodation

- Making all application processes accessible to persons with disabilities
- Making existing facilities used by employees readily accessible to and usable by employees with disabilities
- Restructuring the job; offering part-time or modified work schedules
- Reassigning the employee to vacant positions they are qualified to hold
- Acquiring or modifying equipment or devices
- Adjusting or modifying examinations or training materials or policies as appropriate
- Providing qualified readers or interpreters



Perceived Disability

Under the ADAAA, those who are “perceived” as having disabilities are protected from employment discrimination based on stereotypes, fears, or misconceptions about disability. This protection applies to decisions based on unsubstantiated concerns about productivity, safety, insurance, liability, attendance, the costs of accommodation, accessibility, workers’ compensation costs or acceptance by co-workers and customers

For more information about disabilities and reasonable accommodations visit the Job Accommodation Network online at www.jan.wvu.edu

The Human Rights Bureau is committed to making its services available to persons with disabilities in compliance with Title II of the Americans with Disabilities Act Amendments Act and relevant state law. The Bureau will not exclude persons with disabilities from participation at its meetings or otherwise deny them services, programs or activities. The Bureau will also provide and accept information in alternative formats to accommodate disabilities.

Persons with disabilities requiring accommodation in order to take advantage of the Bureau’s services should contact the Bureau’s staff at 1-800-542-0807.

REASONABLE ACCOMMODATION